

AMENDED IN ASSEMBLY AUGUST 16, 2010

AMENDED IN ASSEMBLY AUGUST 2, 2010

AMENDED IN ASSEMBLY JUNE 23, 2010

AMENDED IN SENATE MAY 20, 2010

AMENDED IN SENATE MAY 5, 2010

AMENDED IN SENATE APRIL 8, 2010

SENATE BILL

No. 900

**Introduced by Senators Alquist and Steinberg
(Coauthor: Senator Pavley)**

January 26, 2010

~~An act to add Section 1346.2 to, and to add Division 114 (commencing with Section 135000) to, the Health and Safety Code, An act to add Title 22 (commencing with Section 100500) to the Government Code, to add Section 1346.2 to the Health and Safety Code, and to add Section 10112.2 to the Insurance Code, relating to health care coverage.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 900, as amended, Alquist. California Health ~~Benefits~~ *Benefit* Exchange.

Existing law, the federal Patient Protection and Affordable Care Act, requires each state to, by January 1, 2014, establish an American Health Benefit Exchange that makes available qualified health plans to qualified individuals and qualified employers, as specified, and meets certain other requirements. Existing law provides for the licensure and regulation of health care service plans by the Department of Managed

Health Care and the regulation of health insurers by the Department of Insurance. ~~Existing law creates the California Health and Human Services Agency, which consists of various departments.~~

This bill would, *contingent on the enactment and operation of AB 1602*, establish the California Health-Benefits *Benefit* Exchange (the Exchange) within state government ~~and would require the Exchange to, among other things, implement specified functions imposed by the federal Patient Protection and Affordable Care Act in a consumer-friendly manner, enter into contracts with health care service plans and health insurers seeking to offer coverage in the Exchange, and provide a choice of products in each region of the state between 5 levels of coverage, as specified. Under the bill, carriers participating in the Exchange that sell products outside the Exchange would be required to offer, market, and sell all products made available to individuals and small employers in the Exchange to individuals and small employers purchasing coverage outside the Exchange. The bill would authorize the Exchange to take various actions and.~~ *The bill* would require the Exchange to be governed by a board composed of the Secretary of California Health and Human Services and 4 other members appointed by the Governor and the Legislature in a specified manner *and would enact other related provisions with respect to the governance of the Exchange.* ~~The bill would create the California Health Benefits Exchange Fund in the State Treasury and would authorize the board to use moneys in the fund, upon appropriation by the Legislature, for purposes of these provisions. The bill would also require the board of the exchange, or the California Health and Human Services Agency, if a majority of the board has not been appointed, to apply for and receive federal funds for purposes of establishing the Exchange if a majority of the board of the Exchange has not been appointed, as specified, and would make those funds available to the agency and the board for those purposes upon appropriation by the Legislature.~~

The bill would require the Director of the Department of Managed Health Care and the Insurance Commissioner to review an Internet portal developed by the United States Department of Health and Human Services and to jointly develop and maintain an electronic clearinghouse of coverage available in the individual and small ~~group~~ *employer* markets if the federal Internet portal does not adequately achieve certain purposes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. It is the intent of the Legislature to enact the*
2 *necessary statutory changes to California law in order to establish*
3 *an American Health Benefit Exchange in California as required*
4 *by the federal Patient Protection and Affordable Care Act (Public*
5 *Law 111-148), as amended by the federal Health Care and*
6 *Education Reconciliation Act of 2010 (Public Law 111-152).*

7 *SEC. 2. Title 22 (commencing with Section 100500) is added*
8 *to the Government Code, to read:*

9
10 *TITLE 22. CALIFORNIA HEALTH BENEFIT EXCHANGE*
11

12 *100500. For purposes of this title, the following definitions*
13 *shall apply:*

14 *(a) "Board" means the board described in subdivision (a) of*
15 *Section 100501.*

16 *(b) "Carrier" means either a private health insurer holding a*
17 *valid outstanding certificate of authority from the Insurance*
18 *Commissioner or a health care service plan, as defined under*
19 *subdivision (f) of Section 1345 of the Health and Safety Code,*
20 *licensed by the Department of Managed Health Care.*

21 *(c) "Exchange" means the California Health Benefit Exchange*
22 *established by Section 100501.*

23 *(d) "Federal act" means the federal Patient Protection and*
24 *Affordable Care Act (Public Law 111-148), as amended by the*
25 *federal Health Care and Education Reconciliation Act of 2010*
26 *(Public Law 111-152), and any amendments to, or regulations or*
27 *guidance issued under, those acts.*

28 *(e) "Fund" means the California Health Trust Fund established*
29 *by Section 100520.*

30 *(f) "Health plan" and "qualified health plan" have the same*
31 *meanings as those terms are defined in Section 1301 of the federal*
32 *act.*

33 *(g) "SHOP Program" means the Small Business Health Options*
34 *Program established by subdivision (m) of Section 100502.*

35 *(h) "Supplemental coverage" means coverage through a*
36 *specialized health care service plan contract, as defined in*
37 *subdivision (o) of Section 1345 of the Health and Safety Code, or*

1 a specialized health insurance policy, as defined in Section 106
2 of the Insurance Code.

3 100501. (a) There is in state government the California Health
4 Benefit Exchange, an independent public entity not affiliated with
5 an agency or department, which shall be known as the Exchange.
6 The Exchange shall be governed by an executive board consisting
7 of five members who are residents of California. Of the members
8 of the board, two shall be appointed by the Governor, one shall
9 be appointed by the Senate Committee on Rules, and one shall be
10 appointed by the Speaker of the Assembly. The Secretary of
11 California Health and Human Services or his or her designee shall
12 serve as a voting, ex officio member of the board.

13 (b) Members of the board, other than an ex officio member,
14 shall be appointed for a term of four years, except that the initial
15 appointment by the Senate Committee on Rules shall be for a term
16 of five years, and the initial appointment by the Speaker of the
17 Assembly shall be for a term of two years. Appointments by the
18 Governor made after January 2, 2011, shall be subject to
19 confirmation by the Senate. A member of the board may continue
20 to serve until the appointment and qualification of his or her
21 successor. Vacancies shall be filled by appointment for the
22 unexpired term. The board shall elect a chairperson on an annual
23 basis.

24 (c) (1) Each person appointed to the board shall have
25 demonstrated and acknowledged expertise in at least two of the
26 following areas:

- 27 (A) Individual health care coverage.
- 28 (B) Small employer health care coverage.
- 29 (C) Health benefits plan administration.
- 30 (D) Health care finance.
- 31 (E) Administering a public or private health care delivery
32 system.
- 33 (F) Health plan purchasing.

34 (2) Appointing authorities shall consider the expertise of the
35 other members of the board and attempt to make appointments so
36 that the board's composition reflects a diversity of expertise.

37 (d) Each member of the board shall have the responsibility and
38 duty to meet the requirements of this title, the federal act, and all
39 applicable state and federal laws and regulations, to serve the
40 public interest of the individuals and small businesses seeking

1 *health care coverage through the Exchange, and to ensure the*
2 *operational well-being and fiscal solvency of the Exchange.*

3 *(e) In making appointments to the board, the appointing*
4 *authorities shall take into consideration the cultural, ethnic, and*
5 *geographical diversity of the state so that the board's composition*
6 *reflects the communities of California.*

7 *(f) (1) A member of the board or of the staff of the Exchange*
8 *shall not be employed by, a consultant to, a member of the board*
9 *of directors of, affiliated with, or otherwise a representative of, a*
10 *carrier or other insurer, an agent or broker, a health care provider,*
11 *or a health care facility or health clinic while serving on the board*
12 *or on the staff of the Exchange and during the first year following*
13 *that service. A member of the board or of the staff of the Exchange*
14 *shall not be a member, a board member, or an employee of a trade*
15 *association of carriers, health facilities, health clinics, or health*
16 *care providers while serving on the board or on the staff of the*
17 *Exchange. A member of the board or of the staff of the Exchange*
18 *shall not be a health care provider unless he or she receives no*
19 *compensation for rendering services as a health care provider and*
20 *does not have an ownership interest in a professional health care*
21 *practice.*

22 *(2) A board member shall not receive compensation for his or*
23 *her service on the board but may receive a per diem and*
24 *reimbursement for travel and other necessary expenses, as*
25 *provided in Section 103 of the Business and Professions Code,*
26 *while engaged in the performance of official duties of the board.*

27 *(3) For purposes of this subdivision, "health care provider"*
28 *means a person licensed or certified pursuant to Division 2*
29 *(commencing with Section 500) of the Business and Professions*
30 *Code, or licensed pursuant to the Osteopathic Act or the*
31 *Chiropractic Act.*

32 *(g) No member of the board shall make, participate in making,*
33 *or in any way attempt to use his or her official position to influence*
34 *the making of any decision that he or she knows or has reason to*
35 *know will have a reasonably foreseeable material financial effect,*
36 *distinguishable from its effect on the public generally, on him or*
37 *her or a member of his or her immediate family, or on either of*
38 *the following:*

39 *(1) Any source of income, other than gifts and other than loans*
40 *by a commercial lending institution in the regular course of*

1 *business on terms available to the public without regard to official*
2 *status aggregating two hundred fifty dollars (\$250) or more in*
3 *value provided to, received by, or promised to the member within*
4 *12 months prior to the time when the decision is made.*

5 *(2) Any business entity in which the member is a director,*
6 *officer, partner, trustee, employee, or holds any position of*
7 *management.*

8 *(h) There shall not be any liability in a private capacity on the*
9 *part of the board or any member of the board, or any officer or*
10 *employee of the board, for or on account of any act performed or*
11 *obligation entered into in an official capacity, when done in good*
12 *faith, without intent to defraud, and in connection with the*
13 *administration, management, or conduct of this title or affairs*
14 *related to this title.*

15 *(i) The board shall hire an executive director to organize,*
16 *administer, and manage the operations of the Exchange. The*
17 *executive director shall be exempt from civil service and shall*
18 *serve at the pleasure of the board.*

19 *(j) The board shall be subject to the Bagley-Keene Open Meeting*
20 *Act (Article 9 (commencing with Section 11120) of Chapter 1 of*
21 *Part 1 of Division 3 of Title 2), except that the board may hold*
22 *closed sessions when considering matters related to litigation,*
23 *personnel, contracting, and rates.*

24 *(k) (1) The board shall apply for planning and establishment*
25 *grants made available to the Exchange pursuant to Section 1311*
26 *of the federal act. If an executive director has not been hired under*
27 *subdivision (i) when the United States Secretary of Health and*
28 *Human Services makes the planning and establishment grants*
29 *available, the California Health and Human Services Agency shall,*
30 *upon request of the board, submit the initial application for*
31 *planning and establishment grants to the United States Secretary*
32 *of Health and Human Services.*

33 *(2) If a majority of the board has not been appointed when the*
34 *United States Secretary of Health and Human Services makes the*
35 *planning and establishment grants available, the California Health*
36 *and Human Services Agency shall submit the initial application*
37 *for planning and establishment grants to the United States*
38 *Secretary of Health and Human Services. Any subsequent*
39 *applications shall be made as described in paragraph (1) once a*
40 *majority of the members have been appointed to the board.*

1 (3) *The board shall be responsible for using the funds awarded*
2 *by the United States Secretary of Health and Human Services for*
3 *the planning and establishment of the Exchange, consistent with*
4 *subdivision (b) of Section 1311 of the federal act.*

5 **SECTION 1.**

6 **SEC. 3.** Section 1346.2 is added to the Health and Safety Code,
7 to read:

8 1346.2. The director shall, in coordination with the Insurance
9 Commissioner, review the Internet portal developed by the United
10 States Secretary of Health and Human Services under subdivision
11 (a) of Section 1103 of the federal Patient Protection and Affordable
12 Care Act (Public Law 111-148) and paragraph (5) of subdivision
13 (c) of Section 1311 of that act, and any enhancements to that portal
14 expected to be implemented by the secretary on or before January
15 1, 2015. The review shall examine whether the Internet portal
16 provides sufficient information regarding all health benefit products
17 offered by health care service plans and health insurers in the
18 individual and small employer markets in California to facilitate
19 fair and affirmative marketing of all individual and small employer
20 ~~plans products~~, particularly outside the California Health Benefits
21 ~~Benefit Exchange created under Division 114 (commencing with~~
22 ~~Section 135000) Title 22 (commencing with Section 100500) of~~
23 ~~the Government Code.~~ If the director and the Insurance
24 Commissioner jointly determine that the Internet portal does not
25 adequately achieve those purposes, they shall jointly develop and
26 maintain an electronic clearinghouse to achieve those purposes.
27 In performing this function, the director and the Insurance
28 Commissioner shall routinely monitor individual and small
29 employer benefit filings with, and complaints submitted by
30 individuals and small ~~employers, to employers to~~, their respective
31 departments, and shall use any other available means to maintain
32 the clearinghouse.

33 **SEC. 2.** ~~Division 114 (commencing with Section 135000) is~~
34 ~~added to the Health and Safety Code, to read:~~

35
36 **~~DIVISION 114. CALIFORNIA HEALTH BENEFITS~~**
37 **~~EXCHANGE~~**
38

39 ~~135000. There is hereby established in state government the~~
40 ~~California Health Benefits Exchange.~~

1 135001. For purposes of this division, the following definitions
2 shall apply:

3 (a) ~~“Board” means the board described in subdivision (k) of~~
4 ~~Section 135005.~~

5 (b) ~~“Carrier” means either a private health insurer holding a~~
6 ~~valid outstanding certificate of authority from the Insurance~~
7 ~~Commissioner or a health care service plan, as defined under~~
8 ~~subdivision (f) of Section 1345, licensed by the Department of~~
9 ~~Managed Health Care, including, but not limited to, a local~~
10 ~~initiative plan, a county-organized health system, or a joint venture~~
11 ~~of local initiative plans and county-organized health systems.~~

12 (c) ~~“Exchange” means the California Health Benefits Exchange~~
13 ~~established by Section 135000.~~

14 (d) ~~“Fund” means the California Health Benefits Fund~~
15 ~~established pursuant to Section 135011.~~

16 (e) ~~“Health plan” and “qualified health plan” have the same~~
17 ~~meanings as those terms are defined in Section 1301 of the Act.~~

18 (f) ~~“SHOP Program” means the Small Business Health Options~~
19 ~~Program administered pursuant to subdivision (g) of Section~~
20 ~~135005.~~

21 (g) ~~“The Act” means the federal Patient Protection and~~
22 ~~Affordable Care Act (Public Law 111-148), as amended by the~~
23 ~~federal Health Care and Education Reconciliation Act of 2010~~
24 ~~(Public Law 111-152).~~

25 135002. (a) ~~The purpose of this division is to implement the~~
26 ~~provisions of the Act requiring the establishment of an American~~
27 ~~Health Benefit Exchange in this state by creating an exchange in~~
28 ~~state government.~~

29 (b) ~~The purpose and mission of the Exchange is to make quality~~
30 ~~and affordable health care coverage available to eligible~~
31 ~~Californians and to meet the requirements of the Act.~~

32 135003. ~~It is the intent of the Legislature that the Exchange do~~
33 ~~all of the following:~~

34 (a) ~~Provide a consumer friendly process that facilitates the~~
35 ~~seamless enrollment of individuals in health care coverage.~~

36 (b) ~~Provide an easily understandable marketplace for purchasing~~
37 ~~health care coverage where consumers can identify their~~
38 ~~appropriate and affordable health care coverage choice and, if~~
39 ~~eligible, claim their federal tax and cost-sharing subsidy.~~

1 ~~(e) Organize the health care coverage and cost choices within~~
2 ~~the Exchange to facilitate competition based on price and quality.~~

3 ~~135004. The Exchange shall meet the requirements imposed~~
4 ~~by the Act, and perform all of the following functions in a~~
5 ~~consumer-friendly manner:~~

6 ~~(a) Provide for the operation of a toll-free telephone hotline to~~
7 ~~respond to requests for assistance.~~

8 ~~(b) Maintain an Internet Web site through which enrollees and~~
9 ~~prospective enrollees of qualified health plans may obtain~~
10 ~~standardized comparative information on those plans.~~

11 ~~(c) Assign a rating to each qualified health plan offered through~~
12 ~~the Exchange in accordance with the criteria developed under~~
13 ~~paragraph (3) of subdivision (c) of Section 1311 of the Act.~~

14 ~~(d) Utilize a standardized format for presenting health benefits~~
15 ~~plan options in the Exchange, including the use of the uniform~~
16 ~~outline of coverage established under Section 2715 of the federal~~
17 ~~Public Health Service Act.~~

18 ~~(e) Consistent with the system established under Section 1413~~
19 ~~of the Act, inform individuals of eligibility requirements for the~~
20 ~~Medi-Cal program, the Healthy Families Program, or any~~
21 ~~applicable state or local public health care coverage program and,~~
22 ~~if, through screening of an application by the Exchange, the~~
23 ~~Exchange determines that an individual is eligible for any of those~~
24 ~~programs, enroll the individual in that program.~~

25 ~~(f) Establish and make available by electronic means a calculator~~
26 ~~to determine the actual cost of coverage after the application of~~
27 ~~any premium tax credit under Section 36B of the Internal Revenue~~
28 ~~Code of 1986 and any cost-sharing reduction under Section 1402~~
29 ~~of the Act.~~

30 ~~(g) Grant a certification, subject to Section 1411 of the Act and~~
31 ~~any implementing regulations, attesting that, for purposes of the~~
32 ~~individual responsibility penalty under Section 5000A of the~~
33 ~~Internal Revenue Code of 1986, an individual is exempt from the~~
34 ~~individual responsibility requirement or from the penalty imposed~~
35 ~~by that section because of either of the following:~~

36 ~~(1) There is no affordable qualified health plan available through~~
37 ~~the Exchange, or the individual's employer, covering the~~
38 ~~individual.~~

~~(2) The individual meets the requirements for any other exemption from the individual responsibility requirement or penalty.~~

~~135005. In addition to meeting the requirements of the Act, the Exchange shall do all of the following:~~

~~(a) Determine the criteria and process for eligibility, enrollment, and disenrollment of enrollees and potential enrollees in the Exchange.~~

~~(b) Develop processes to coordinate with the county entities that administer eligibility for the Medi-Cal program and the entity that determines eligibility for the Healthy Families Program, including, but not limited to, processes for case transfer, referral, and enrollment in the Exchange of individuals applying for assistance to those entities, if allowed or required by federal law.~~

~~(c) Negotiate and enter into contracts, including selective carrier contracts, with carriers seeking to offer coverage in the Exchange.~~

~~(d) Determine the participation requirements, standards, and selection criteria for carriers and products offered through the Exchange, which may include, but are not limited to, standards that encourage the use of delivery systems that deliver cost-effective, high-quality care.~~

~~(e) Provide a choice of products in each region of the state, including a choice in each region of the state between the five levels of coverage contained in subdivisions (d) and (e) of Section 1302 of the Act.~~

~~(f) Require, as a condition of participation in the Exchange, carriers that sell any products outside the Exchange to do both of the following:~~

~~(1) Fairly and affirmatively offer, market, and sell all products made available to individuals in the Exchange to individuals purchasing coverage outside the Exchange.~~

~~(2) Fairly and affirmatively offer, market, and sell all products made available to small employers in the Exchange to small employers purchasing coverage outside the Exchange.~~

~~(g) Administer a separate Small Business Health Options Program (SHOP) that is designed to assist small employers in facilitating the enrollment of their employees in qualified health plans offered through the Exchange in the small group market in a manner consistent with paragraph (2) of subdivision (a) of Section 1312 of the Act.~~

1 ~~(h) Undertake activities necessary to market and publicize the~~
2 ~~availability of health care coverage and federal subsidies through~~
3 ~~the Exchange. The board shall also undertake outreach and~~
4 ~~enrollment activities that seek to assist enrollees and potential~~
5 ~~enrollees with enrolling and reenrolling in the Exchange in the~~
6 ~~least burdensome manner, including populations that may~~
7 ~~experience barriers to enrollment, such as the disabled and those~~
8 ~~with limited English language proficiency.~~

9 ~~(i) Select and set performance standards and compensation for~~
10 ~~navigators selected pursuant to subdivision (i) of Section 1311 of~~
11 ~~the Act.~~

12 ~~(j) Employ necessary staff, including actuarial staff.~~

13 ~~(k) (1) Be governed by a board consisting of five members. Of~~
14 ~~the five members, two shall be appointed by the Governor, one~~
15 ~~shall be appointed by the Senate Committee on Rules, and one~~
16 ~~shall be appointed by the Speaker of the Assembly. In making~~
17 ~~appointments to the board, the appointing authorities shall take~~
18 ~~into consideration the cultural, ethnic, and geographical diversity~~
19 ~~of the state so that the board's composition reflects the communities~~
20 ~~of California. The Secretary of California Health and Human~~
21 ~~Services or his or her designee shall serve as an ex officio voting~~
22 ~~member.~~

23 ~~(2) Members of the board, other than an ex officio member,~~
24 ~~shall be appointed for a term of four years. Vacancies shall be~~
25 ~~filled by appointment for the unexpired term.~~

26 ~~(3) Each person appointed to the board shall have demonstrated~~
27 ~~and acknowledged expertise in at least two of the following areas:~~

28 ~~(A) Individual health care coverage.~~

29 ~~(B) Small group health care coverage.~~

30 ~~(C) Health benefits plan administration.~~

31 ~~(D) Health care finance.~~

32 ~~(E) Administering a public or private health care delivery~~
33 ~~system.~~

34 ~~(F) Health plan purchasing.~~

35 ~~(4) Each member of the board shall have the responsibility and~~
36 ~~duty to meet the requirements of this division and the Act, to serve~~
37 ~~the public interest of the individuals and small businesses seeking~~
38 ~~health care coverage through the Exchange, and to ensure the~~
39 ~~operational well-being and fiscal solvency of the Exchange.~~

~~(5) The chairperson of the board shall hire an executive director to organize, administer, and manage the operations of the Exchange. The executive director shall serve at the pleasure of the board.~~

~~(6) A member of the board shall not be employed by, a consultant for, a member of the board of directors of, affiliated with, an agent of, or otherwise a representative of, any carrier or other insurer, agent, or broker, or a health care provider, health care facility, or health clinic while serving on the board and during the first year following his or her service on the board. A board member shall not receive compensation for his or her service on the board but may receive per diem and reimbursement for travel and other necessary expenses, as provided in Section 103 of the Business and Professions Code, while engaged in the performance of official duties of the board.~~

~~(7) No member of the board shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any decision that he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on him or her or a member of his or her immediate family, or on either of the following:~~

~~(A) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the member within 12 months prior to the time when the decision is made.~~

~~(B) Any business entity in which the member is a director, officer, partner, trustee, employee, or holds any position of management.~~

~~(8) The board shall hold public meetings and be subject to the requirements of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code), except that the board may hold closed sessions when considering matters related to litigation, personnel, contracting, and the development of rates.~~

~~(l) Apply for and receive federal funds for purposes of establishing and administering the Exchange, including funds made available pursuant to Section 1311 of the Act.~~

1 (m) Report, or contract with an independent entity to report, to
2 the Legislature by December 1, 2018, on whether to adopt the
3 option in paragraph (3) of subdivision (c) of Section 1312 of the
4 Act to merge the individual and small group markets. In its report,
5 the board shall provide information, based on at least two years
6 of data from the Exchange, on the potential impact on rates paid
7 by individuals and by small employers in a merged individual and
8 small group market, as compared to rates paid by individuals and
9 small employers if separate individual and small group markets
10 are maintained. A report made pursuant to this subdivision shall
11 be submitted pursuant to Section 9795 of the Government Code.

12 (n) With respect to the SHOP Program, collect premiums and
13 administer all other necessary and related tasks, including, but not
14 limited to, enrollment and plan payment, in order to make the
15 offering of employee plan choice as simple as possible for qualified
16 small employers.

17 (o) Ensure that the Exchange provides oral interpretation
18 services in any language for individuals seeking coverage through
19 the Exchange and makes available a toll-free telephone number
20 for the hearing and speech impaired. The board shall ensure that
21 written information made available by the Exchange is presented
22 in a plainly worded, easily understandable format and made
23 available in prevalent languages.

24 135006. The Exchange may do any of the following:

25 (a) Issue rules and regulations, as necessary. Until January 1,
26 2016, any necessary rules and regulations may be adopted as
27 emergency regulations in accordance with the Administrative
28 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
29 Part 1 of Division 3 of Title 2 of the Government Code). The
30 adoption of these regulations shall be deemed an emergency and
31 necessary for the immediate preservation of the public peace, health
32 and safety, or general welfare.

33 (b) Apply for and receive funds from private foundations.

34 (c) Collaborate with the State Department of Health Care
35 Services, to the extent possible, to allow an individual the option
36 to remain enrolled with his or her carrier and provider network in
37 the event the individual experiences a loss of eligibility of premium
38 tax credits and becomes eligible for the Medi-Cal program or the
39 Healthy Families Program, or loses eligibility for the Medi-Cal

1 program or the Healthy Families Program and becomes eligible
2 for premium tax credits through the Exchange.

3 (d) ~~Share information with relevant state departments, consistent~~
4 ~~with the confidentiality provisions in Section 1411 of the Act,~~
5 ~~necessary for the administration of the Exchange.~~

6 (e) ~~Require carriers participating in the Exchange to make~~
7 ~~available to the Exchange and regularly update an electronic~~
8 ~~directory of contracting health care providers so that individuals~~
9 ~~seeking coverage through the Exchange can search by health care~~
10 ~~provider name to determine which health plans in the Exchange~~
11 ~~include that health care provider in their network. The board may~~
12 ~~also require a carrier to provide regularly updated information to~~
13 ~~the Exchange as to whether a health care provider is accepting~~
14 ~~new patients for a particular health plan. The Exchange may~~
15 ~~provide an integrated and uniform consumer directory of health~~
16 ~~care providers indicating which carriers the providers contract with~~
17 ~~and whether the providers are currently accepting new patients.~~
18 ~~The Exchange may also establish methods by which health care~~
19 ~~providers may transmit relevant information directly to the~~
20 ~~Exchange, rather than through a carrier.~~

21 (f) ~~Require carriers participating in the Exchange to immediately~~
22 ~~notify the Exchange, under the terms and conditions established~~
23 ~~by the board, when an individual is or will be enrolled in or~~
24 ~~disenrolled from any qualified health plan offered by the carrier.~~

25 (g) ~~Enter into other contracts as are necessary or proper to carry~~
26 ~~out the duties of the Exchange.~~

27 (h) ~~Determine the cost sharing in health benefits coverage that~~
28 ~~the Exchange will contract to make available from participating~~
29 ~~carriers.~~

30 (i) ~~With respect to individual coverage made available in the~~
31 ~~Exchange, collect premiums and assist in the administration of~~
32 ~~subsidies.~~

33 (j) ~~Appoint committees, as necessary, to provide technical~~
34 ~~assistance in the operation of the Exchange.~~

35 (k) ~~Undertake activities necessary to administer the Exchange,~~
36 ~~including marketing and publicizing the Exchange and establishing~~
37 ~~rules, conditions, and procedures for ensuring carrier, employer,~~
38 ~~and enrollee compliance with Exchange requirements, consistent~~
39 ~~with federal law and regulations.~~

~~(l) Consistent with federal procedures established under subdivision (e) of Section 1312 of the Act, establish procedures to allow agents or brokers to do both of the following:~~

~~(1) Enroll individuals in any qualified health plan in the individual or small group market as soon as the plan is offered through the Exchange.~~

~~(2) Assist individuals in applying for premium tax credits and cost-sharing reductions for health plans sold through the Exchange.~~

~~(m) Consistent with subdivision (d) of Section 1311 of the Act, assess a charge, at the lowest possible rate, on the qualified health plans offered by carriers to support the development, operations, and prudent cash management of the Exchange. This charge shall not affect the requirement under Section 1301 of the Act that carriers charge the same premium rate for each qualified health plan whether offered inside or outside the Exchange.~~

~~135006.1. The Exchange shall only collect information from individuals or designees of individuals necessary to administer the Exchange and consistent with Section 1411 of the Act.~~

~~135007. (a) Notwithstanding any other provision of law, the Exchange shall not be subject to licensure or regulation by the Department of Insurance or the Department of Managed Health Care.~~

~~(b) Carriers that contract with the Exchange shall be in good standing with their respective regulatory agencies.~~

~~135008. (a) If an individual or an employer is dissatisfied with any action or failure to act that has occurred in connection with eligibility for, or enrollment in, the Exchange, the individual or employer shall have the right to appeal to the board and shall be accorded an opportunity for a fair hearing. Hearings shall be conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code to the extent those provisions are consistent with appeals requirements imposed under the Act.~~

~~(b) Notwithstanding subdivision (a), the board shall not be required to provide an appeal if the subject of the appeal is within the jurisdiction of the Department of Managed Health Care pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2) and its implementing regulations, or within the jurisdiction of the~~

1 Department of Insurance pursuant to the Insurance Code and its
2 implementing regulations:

3 135009. Nothing in this division shall be construed to compel
4 an individual to enroll in a qualified health plan or to participate
5 in the Exchange.

6 135010. If a majority of the board has not been appointed when
7 the United States Secretary of Health and Human Services makes
8 the initial planning and establishment grants available under
9 Section 1311 of the Act, the California Health and Human Services
10 Agency shall submit the initial application for planning and
11 establishment grants to the United States Secretary of Health and
12 Human Services.

13 135010.5. There shall not be any liability in a private capacity
14 on the part of the board or any member of the board, or any officer
15 or employee of the board, for or on account of any act performed
16 or obligation entered into in an official capacity, when done in
17 good faith, without intent to defraud, and in connection with the
18 administration, management, or conduct of this division or affairs
19 related to this division.

20 135011. (a) The California Health Benefits Exchange Fund
21 is hereby created in the State Treasury as a special fund consisting
22 of revenue necessary for the purposes of this division. Any moneys
23 in the fund that are unexpended or unencumbered at the end of a
24 fiscal year may be carried forward to the next succeeding fiscal
25 year and may be spent without regard to fiscal year.

26 (b) The board shall establish a prudent reserve in the fund.

27 (c) Notwithstanding any other provision of law, moneys
28 deposited in the fund shall not be loaned to, or borrowed by, any
29 other special fund or the General Fund, or a county general fund
30 or any other county fund.

31 (d) Except as provided in subdivision (c), moneys in the fund
32 shall, upon appropriation by the Legislature, be used by the board
33 for the purposes of this division.

34 (e) Moneys in the fund received pursuant to Section 135010
35 shall, upon appropriation by the Legislature, be used by the
36 California Health and Human Services Agency or the board for
37 purposes of establishing the Exchange.

38 (f) Notwithstanding Section 16305.7 of the Government Code,
39 all interest earned on the moneys that have been deposited into the
40 fund shall be retained in the fund.

1 ~~SEC. 3.~~

2 SEC. 4. Section 10112.2 is added to the Insurance Code, to
3 read:

4 10112.2. The commissioner shall, in coordination with the
5 Director of the Department of Managed Health Care, review the
6 Internet portal developed by the United States Secretary of Health
7 and Human Services under subdivision (a) of Section 1103 of the
8 federal Patient Protection and Affordable Care Act (Public Law
9 111-148) and paragraph (5) of subdivision (c) of Section 1311 of
10 that act, and any enhancements to that portal expected to be
11 implemented by the secretary on or before January 1, 2015. The
12 review shall examine whether the Internet portal provides sufficient
13 information regarding all health benefit products offered by health
14 care service plans and health insurers in the individual and small
15 employer markets in California to facilitate fair and affirmative
16 marketing of all individual and small employer ~~plans~~ products,
17 particularly outside the Health ~~Benefits~~ Benefit Exchange created
18 under ~~Division 114 (commencing with Section 135000)~~ of the
19 ~~Health and Safety Code. Title 22 (commencing with Section~~
20 ~~100500) of the Government Code.~~ If the commissioner and the
21 Director of the Department of Managed Health Care jointly
22 determine that the Internet portal does not adequately achieve those
23 purposes, they shall jointly develop and maintain an electronic
24 clearinghouse to achieve those purposes. In performing this
25 function, the commissioner and the Director of the Department of
26 Managed Health Care shall routinely monitor individual and small
27 employer benefit filings with, and complaints submitted by
28 individuals and small employers to, their respective departments,
29 and shall use any other available means to maintain the
30 clearinghouse.

31 SEC. 5. *This act shall become operative only if Assembly Bill*
32 *1602 of the 2009–10 Regular Session is also enacted and becomes*
33 *operative.*

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